

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

KERRY WHIPKEY and  
ROBYN WHIPKEY,

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED	
SEP - 8 2009	
CLERK, U.S. DISTRICT COURT By _____ Deputy	

Plaintiffs,

v.

RUNNING D CONSTRUCTION, LLC.  
and JUSTIN SHEA DAVIS

**2-09cv-225-J**

Defendants.

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**COMPLAINT AND DEMAND FOR JURY TRIAL**

COME NOW the Plaintiffs, KERRY WHIPKEY and ROBYN WHIPKEY, by and through their undersigned attorneys, and sue the Defendants RUNNING D CONSTRUCTION, LLC. and JUSTIN SHEA DAVIS, for overtime compensation and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. §216(b).

1. Plaintiff, KERRY WHIPKEY, is an individual residing in Potter County, Texas.
2. Plaintiff, ROBYN WHIPKEY, is an individual residing in Potter County, Texas.
3. Defendant, RUNNING D CONSTRUCTION, LLC., is a limited liability company formed and existing under the laws of the State of Texas and whose principal place of business is in Potter County, Texas.
4. Defendant JUSTIN SHEA DAVIS is an individual residing in Potter County, Texas and at all times relevant to this claim acted directly or indirectly in the interest of Defendant RUNNING D CONSTRUCTION, INC., in relation to Plaintiffs' employment and was substantially in control of the terms and conditions of the Plaintiffs' work. Defendant JUSTIN SHEA DAVIS

was an employer as defined by 29 U.S.C. §203(d).

5. Jurisdiction is conferred on this Court by Title 28 U.S.C. §1337 and by Title 29 U.S.C. §216(b). At all times pertinent to this Complaint, RUNNING D CONSTRUCTION, LLC. was an enterprise engaged in interstate commerce. At all times pertinent to this Complaint, Defendants regularly owned and operated businesses engaged in commerce or in the production of goods for commerce as defined by §3(r) and 3(s) of the Act, 29 U.S.C. §203(r) and 203(s). Additionally, Plaintiffs were individually engaged in commerce and their work was essential to Defendants' business. Venue is proper in this district under 28 U.S.C. § 1391.

6. The Plaintiff, KERRY WHIPKEY, worked for Defendants from September 13, 2008 through January 8, 2009 as a store manager.

7. The Plaintiff, ROBYN WHIPKEY, worked for Defendants from October 13, 2008 through January 8, 2009 as a store clerk.

8. During one or more weeks of Plaintiffs' employment with Defendants, Plaintiffs have worked in excess of forty (40) hours (overtime hours).

9. During one or more weeks of Plaintiffs' employment with Defendants, Plaintiffs worked overtime hours, and Defendants have failed to pay Plaintiffs one and one-half times their respective regular rates of pay for each overtime hour worked.

**COUNT I**  
**(KERRY WHIPKEY – OVERTIME)**

10. Plaintiff, KERRY WHIPKEY, realleges and incorporates herein the allegations contained in Paragraphs 1 through 9 above.

11. The acts described in the preceding paragraph violate the Fair Labor Standards Act,

which prohibits the denial of overtime compensation for hours worked in excess of forty (40) per workweek. Defendants willfully violated Plaintiff's rights secured by the FLSA.

12. As a result of Defendants' unlawful conduct, Plaintiff is entitled to actual and compensatory damages, including the amount of overtime which was not paid and which should have been paid.

13. Section 216(b) of the FLSA provides that any employer who violates the statute shall be liable for unpaid overtime pay and an additional equal amount as liquidated damages. Therefore, Plaintiff seeks an award of liquidated damages in an equal amount as the amount of unpaid overtime pay.

14. Plaintiff further seeks liquidated damages as a result of Defendants' willful failure and refusal to pay overtime in violation of Section 7 of the FLSA, 29 U.S.C. § 207.

15. Plaintiff also seeks compensation of the out of pocket expenses and costs of court he will have incurred in this action. Plaintiff is also entitled to reasonable and necessary attorneys' fees. See 29 U.S.C. § 216(b).

WHEREFORE, PREMISES CONSIDERED, Plaintiff KERRY WHIPKEY requests that:

A) The Court assume jurisdiction of this cause and that Defendants be cited to appear;  
B) The Court award damages to Plaintiff KERRY WHIPKEY as specified above with Defendants being found jointly and severally liable;

C) The Court award reasonable and necessary attorneys' and expert fees and costs;  
D) The Court award Plaintiff pre- and post-judgment interest at the highest rates allowed.

Plaintiff further prays for any such other relief as the Court may find proper, whether at law or in equity.

**COUNT II**  
**(ROBYN WHIPKEY-OVERTIME)**

16. Plaintiff, ROBYN WHIPKEY, realleges and incorporates herein the allegations contained in Paragraphs 1 through 9 above.

17. The acts described in the preceding paragraph violate the Fair Labor Standards Act, which prohibits the denial of overtime compensation for hours worked in excess of forty (40) per workweek. Defendants willfully violated Plaintiff's right secured by the FLSA.

18. As a result of Defendants' unlawful conduct, Plaintiff is entitled to actual and compensatory damages, including the amount of overtime which was not paid and which should have been paid.

19. Section 216(b) of the FLSA provides that any employer who violates the statute shall be liable for unpaid overtime pay and an additional equal amount as liquidated damages. Therefore, Plaintiff seeks an award of liquidated damages in an equal amount as the amount of unpaid overtime pay.

20. Plaintiff further seeks liquidated damages as a result of Defendants' willful failure and refusal to pay overtime in violation of Section 7 of the FLSA, 29 U.S.C. § 207.

21. Plaintiff also seeks compensation of the out of pocket expenses and costs of court she will have incurred in this action. Plaintiff is also entitled to reasonable and necessary attorneys fees. See 29 U.S.C. § 216(b).

WHEREFORE, PREMISES CONSIDERED, Plaintiff ROBYN WHIPKEY requests that:

- A) The Court assume jurisdiction of this cause and that Defendants be cited to appear;
- B) The Court award damages to Plaintiff ROBYN WHIPKEY as specified above with

Defendants being found, jointly and severally liable;

- C) The Court award reasonable and necessary attorneys' and expert fees and costs;
- D) The Court award Plaintiff pre- and post-judgment interest at the highest rates allowed.

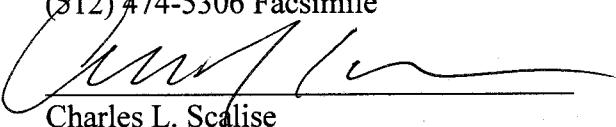
Plaintiff further prays for any such other relief as the Court may find proper, whether at law or in equity.

**JURY DEMAND**

Plaintiffs hereby demands a trial by jury of all the issues and facts in this case.

Dated: September 4<sup>th</sup>, 2009

Respectfully submitted,  
ROSS LAW P.C.  
1104 San Antonio Street  
Austin, Texas 78701  
(512) 474-7677 Telephone  
(512) 474-5306 Facsimile

  
Charles L. Scalise  
ATTORNEY FOR PLAINTIFFS

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**  
KERRY WHIPKEY and ROBYN WHIPKEY,

**(b) County of Residence of First Listed Plaintiff** \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

**(c) Attorney's (Firm Name, Address, and Telephone Number)**  
Charles L. Scalise, Ross Law Group, 1104 San Antonio Street, Austin, Texas 78701; telephone: (512) 474-7677

**DEFENDANTS**  
RUNNING D CONSTRUCTION, LLC. and JUSTIN SHEA DAVIS

**County of Residence of First Listed Defendant** \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)  
(For Diversity Cases Only)

Citizen of This State	PTF	DEF	PTF	DEF
<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 850 Securities/Commodities/ Exchange	
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 890 Other Statutory Actions	
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN** (Place an "X" in One Box Only)  
 1 Original Proceeding  2 Removed from State Court  3 Remanded from Appellate Court  4 Reinstated or Reopened  5 Transferred from another district (specify)  6 Multidistrict Litigation  7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**Fair Labor Standards Act**

**VI. CAUSE OF ACTION**  
Brief description of cause:  
**Overtime Pay**

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** **CHECK YES only if demanded in complaint:**  
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions): **JUDGE** **DOCKET NUMBER**

DATE **SIGNATURE OF ATTORNEY OF RECORD**

09/04/2009 *Justin Shea Davis*  
FOR OFFICE USE ONLY

RECEIPT # AM002154 AMOUNT 350.00 APPLYING IFFP **JUDGE** **MAG. JUDGE**